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Honorable Keith E. Warren
Executive Director
Alabama State Board of Auctioneers
2777 Zelda Road
Montgomery, AL 36106

Auctioneers, Board of – Auctions
and Auctioneers – Licenses and
Permits – Internet

Internet auctions do not constitute auction businesses under section 34-4-2(6) of the Code of Alabama falling under the jurisdiction of the Board of Auctioneers if they do not involve bid calling present in traditional crying auctions.

Dear Mr. Warren:

This opinion of the Attorney General is issued in response to your request on behalf of the Board of Auctioneers.

QUESTION

Does the Board of Auctioneers have jurisdiction over the activities of certain online auctions that are open to the public as coming within the definition of “auction business”?

FACTS AND ANALYSIS

Your request states that certain online “auctions” are similar to traditional “crying” auctions in many respects, including the sale of items to the public through a bidding process, the registering of bidders who must agree to the terms of each sale, and the “public sale of property to the highest bidder.” You further state that these types of internet public sales, however, differ from traditional auctions in that the number of bidders and time available to submit a bid are not constrained by the time and space limitations inherent with the traditional auction block. The time remaining in the bidding process and the notification of bids that have been made are governed electronically rather than through “bid calling.”

This Office addressed a similar issue in an opinion to Honorable Frank McDaniel, Member, House of Representatives, dated July 16, 2008, A.G. No. 2008-109. That opinion considered the authority of the Board of Auctioneers (“Board”) to regulate internet auction consignment shops. The *McDaniel* opinion explained that an “auction business” is “[t]he performing of any of the acts of an auctioneer or apprentice auctioneer. . . .” ALA. CODE § 34-4-2(6) (2010). The term “auctioneer” is defined in both sections 34-4-2(1) and 34-4-27 of the Code of Alabama. According to section 34-4-2(1), an auctioneer is required to either “ha[ve] graduated from an accredited auction school and ha[ve] one year’s experience as an apprentice auctioneer or ha[ve] two years’ experience as an apprentice auctioneer in *bid calling*. . . .” ALA. CODE § 34-4-2(1) (2010) (emphasis added). Furthermore, under section 34-4-27, “the term ‘auctioneer’ shall include any person selling . . . things of value at *public outcry*.” ALA. CODE § 34-4-27 (2010) (emphasis added). Therefore, the *McDaniel* opinion concluded that internet auction consignment shops that act as intermediaries between sellers of goods and an internet auction service provider are not auctioneers subject to the regulation of the Board if the internet sales or auction website does not engage in bid calling or the sale of things of value at public outcry.

Like internet auction consignment shops, the internet “auctions” you describe also do not involve “bid calling” or selling items at “public outcry.” Because the time left in the bidding process and notification of the submission of bids is conducted electronically, these sales are not conducted by auctioneers as defined in sections 34-4-2(1) and 34-4-27. Thus, they do not qualify as “auction businesses” under section 34-4-2(6) and are not required to be licensed under section 34-4-20 of the Code of Alabama. It is noted that any unlicensed person who represents that he or

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she is an auctioneer or is engaged in the auction business violates section 34-4-20 regardless of whether he or she actually qualifies as an "auctioneer" under the statute or whether or not such representations are made online. ALA. CODE § 34-4-20 (2010).

This reading is not altered by our opinion to Honorable Michelle Franklin, City Clerk, City of Piedmont, dated August 30, 2011, A.G. No. 2011-095, to which you refer. That opinion stated that online auction sites open to the public are "public auctions" under section 11-47-116 of the Code of Alabama governing the sale of abandoned property by municipalities. ALA. CODE § 11-47-116 (2008). The *Franklin* opinion, however, did not refer to the Board statutes and, indeed, section 11-47-116 "does not require the auction to be conducted by an auctioneer or by outcry." *Id.* at 3.

CONCLUSION

Internet auctions do not constitute auction businesses under section 34-4-2(6) of the Code of Alabama falling under the jurisdiction of the Board of Auctioneers if they do not involve bid calling present in traditional crying auctions.

I hope this opinion answers your question. If this Office can be of further assistance, please contact John Porter of my staff.

Sincerely,

STEVE MARSHALL
Attorney General
By:


G. WARD BEESON, III
Chief, Opinions Division

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